IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Con.Case(C).No. 1237 of 2007(S)

AGAINST THE JUDGEMENT/ORDER IN WPC.3884/2007 Dated 05/02/2007

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PETITIONER/2ND WRIT PETITIONER:

GEORGE JACOB
1096,12TH A MAIN
HAL, II STAGE, INDIRA NAGAR,
BANGALORE, KARNATAKA.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

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1. SAJEEV KUMAR
S/O. NOT KNOWN, AGED NOT KNOWN
FOREST RANGER OFFICER,
KUTTIADI,

2. P.P.MUKUNDAN,
S/O. NOT KNOWN, AGED NOT KNOWN,BEAT GUARD,
FOREST RANGER OFFICER,
KUTTIADI, (PASSUKADAVU SECTION)
KUTTIADI,

BY GOVERNMENT PLEADER (FOREST) SRI. RENJITH THAMPAN

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 04/10/2007, ALONG WITH COC NO. 1390 OF 2007
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

Cont. Case (C) NOs. 1237 & 1390 OF 2007

Dated this the 4th day of October, 2007

JUDGMENT

These applications under the Contempt of Courts Act are filed by the second petitioner in WPC 3884 of 2007 which was disposed of by this Court at the stage of admission on 5.2.2007.

2. The issue raised in the Writ Petition was regarding the coverage of the land claimed by the writ petitioners by the provisions of Act 21 of 2005. By the judgment in the writ petition, the question as to whether that land is ecologically fragile and falls within the purview of the Act was to gain the attention of the Chief Conservator of Forests, who is the Custodian of such lands, before whom an application filed by the writ petitioners was then pending. In the interregnum, it was directed that the parties will maintain status quo regarding the management of the lands in question and that writ petitioners would be entitled to carry out normal maintenance and agricultural operations; however that, no trees would be cut down. The status of the land was also to be maintained with no change.

3. These cases are filed on the allegation that though the labourers of the writ petitioners were entitled to carry out normal agricultural operations, as employees of the petitioners, on the basis of the directions in the Writ Petition, various cases have been booked against them on false and frivolous allegations relatable to the provisions of the aforesaid Act, and that the officials have thus violated the directions contained in the aforesaid judgment.

4. With the passage of time, the Custodian of Ecologically Fragile Lands has issued order dated 29.9.2007 refusing to accept the contentions of the petitioners that the property in question is liable to be de-notified and excluded from the purview of Act 21 of 2005. That issue can be agitated only before the Tribunal constituted under Act 21 of 2005, which is the competent authority bestowed with ample jurisdiction to adjudicate on the disputed questions of fact and on the question of coverage under the Act. The quality of jurisdiction and the scope of adjudication by such Tribunal are fairly wide enough for any aggrieved party to place all issues and disputes for consideration and

decision.

5. The question of prosecuting persons for having committed any act of agricultural operations or destruction in violation of status quo order contained in the judgment in WPC 3884 of 2007 and the question as to whether such actions would result in violation of the provisions of law leading to penal consequences are matters that would necessarily depend upon the outcome of any proceeding before the Tribunal because the status quo ordered to be maintained would depend upon the nature of area and the use to which such area was put to, before agricultural operations were allegedly prevented by the officials since a few years by now. It is also note-worthy that it is the petitioners' case that repeated orders were issued by this Court during the previous years also, permitting the petitioners to carry out agricultural operations. That apart, the petitioners have a further case that the property in question was originally cardamom plantation and it was converted into coffee plantation with the permission of the competent authority and that the identity of the property is beyond

dispute on account of certain proceedings which have led to surrender of certain properties by the petitioners or their predecessors in terms of proceedings under the Kerala Land Reforms Act. In the aforesaid circumstances, it is contended that it is necessary to ensure that the rights of the parties are protected and preserved during proceedings, if any, before the Tribunal in terms of Act 21 of 2005.

6. In the light of the aforesaid, these applications are disposed of with following directions:

> (1) If the writ petitioners invoke the authority of the Tribunal within the period prescribed by law, after service of a copy of the order of the Chief Conservator of Forests dated 29.9.2007 on the petitioners, the Tribunal will consider any interlocutory application that the writ petitioners may file regarding preservation and management of the property during the pendency of the proceedings before the Tribunal. It would also consider the request of the petitioners for bringing in evidence on record

including by issuance of commission, having regard to the nature of contentions between the parties.

(2) Various cases booked after the judgment of this Court in W.P.(C) No. 3884 of 2007, against the writ petitioners and their employees and relatable to the property in question, would stand stayed, awaiting final disposal of the proceedings of the Tribunal. It is further directed that the writ petitioners and the Government shall not meddle with the property until interlocutory order, if any, is issued by the Tribunal.

(THOTTATHIL B. RADHAKRISHNAN)
Judge

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